

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**May 18, 2004**

**IN RE:**

**APPLICATION OF TENNESSEE  
INDEPENDENT TELECOMMUNICATIONS  
GROUP, LLC D/B/A IRIS NETWORKS FOR  
A CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY TO  
PROVIDE COMPETITIVE ACCESS  
SERVICES AND TRANSPORT  
TELECOMMUNICATIONS SERVICES  
WITHIN THE STATE OF TENNESSEE AND  
APPROVAL OF THE FRANCHISE  
AGREEMENT WITH THE CITY OF  
KNOXVILLE**

**DOCKET NO.  
03-00581**

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**INITIAL ORDER GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY**

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This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority" or "TRA") at a Hearing held on March 15, 2004, to consider the *Application for Certificate of Public Convenience and Necessity to Provide Certain Telecommunications Services within the State of Tennessee and Approval of Franchise Agreement* (the "Application") filed by Tennessee Independent Telecommunications Group, LLC d/b/a Iris Networks ("Iris") on November 3, 2003. The Application requests the Authority to grant Iris a certificate of public convenience and necessity to provide competing access services and transport telecommunications services in the State of Tennessee and to approve a franchise agreement between Iris and the City of Knoxville.

**Legal Standard for Granting Certificate of Public Convenience and Necessity and Approving Franchise Agreement**

Iris' *Application* was made pursuant to, and was considered in light of, the criteria for granting a Certificate of Public Convenience and Necessity ("CCN") as set forth in Tenn. Code Ann. § 65-4-201, which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

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(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

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(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide

telecommunications services in an area outside its service area existing on June 6, 1995.<sup>1</sup>

Tenn. Code Ann. § 65-4-107 requires that any privilege or franchise granted to any public utility by the State of Tennessee or by any political subdivision thereof be approved by the Authority. Such approval is to be granted only after a hearing and upon a determination by the Authority that the privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest. The City of Knoxville has granted Iris a non-exclusive, revocable license to construct, install and maintain its facilities in city rights-of-way and in consideration for the grant of the license has required, among other things, payment of five percent (5%) of the gross revenues received by Iris from operation of Iris' network in the city.

#### **The March 15, 2004 Hearing**

Pursuant to Tenn. Code Ann. § 65-4-204, public notice of the Hearing in this matter was issued by the Hearing Officer on February 27, 2004. No persons sought intervention prior to or during the Hearing. At the Hearing held on March 15, 2004, Ellen Bryson, Chief Manager of Iris Networks, 211 Commerce Street, Suite 610, Nashville, TN 37201, participated in the Hearing, presented testimony, and was subject to examination by the Hearing Officer. D. Billye Sanders, Esq., Waller, Lansden, Dortch & Davis, Nashville City Center, 511 Union Street, Suite 2100, P.O. Box 198966, Nashville, Tennessee 37219-8966, appeared on behalf of Iris. Angela Bolton,

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<sup>1</sup> Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U.S.C. § 253(d). *In the Matter of AVR, L P d/b/a Hyperion of Tennessee, L P Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, (Memorandum Opinion and Order) 14 F.C.C.R. 11,064 (May 27, 1999), (Memorandum Opinion and Order) 16 F.C.C.R. 1247 (January 8, 2001). The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee. *See In re Application of Level 3 Communications, LLC to Expand its CCN to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services in all Tennessee Service Areas*, Docket No. 02-00230, *Order Approving Application of Level 3 Communications, L L C to Amend Its Certificate of Public Convenience and Necessity* (June 28, 2002).

Esq., Assistant City Attorney, 400 Main Street, P.O. Box 1631, Knoxville, Tennessee 37901-1631, appeared on behalf of the City of Knoxville, Tennessee. Upon Iris's conclusion of the presentation of its proof, the Hearing Officer granted Iris' *Application* based upon the following findings of fact and conclusions of law:

## **I. Iris' Qualifications**

1. Iris is a corporation originally organized under the laws of the State of Tennessee on November 25, 1998.

2. The complete street address of Iris' registered agent is Mark Patterson, 950 Main Street, Suite D, Wartburg, Tennessee 37887. The complete street address of Iris' corporate office is 211 Commerce Street, Suite 610, Nashville, Tennessee 37201. The telephone number is (615) 425-2300 and the facsimile number is (615) 986-2092.

3. The *Application* and supporting documentary information existing in the record indicate that Iris has the requisite technical and managerial ability to provide competitive access services and transport telecommunications services within the City of Knoxville and within the State of Tennessee. Specifically, Iris' senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

4. Iris has the necessary capital and financial ability to provide the services it proposes to offer.

5. Iris has represented that it will adhere to all applicable policies, rules and orders of the Authority.

## **II. Proposed Services**

Iris intends to provide competitive access services and transport telecommunications services within the City of Knoxville and within the State of Tennessee.

### **III. Permitting Competition to Serve the Public Convenience and Necessity**

Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of Iris' *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services and thus meets the requirements set forth in Tenn. Code Ann. § 65-4-201. The Hearing Officer finds that the proposed franchise fee of five percent (5%) can and should be reviewed under the standards set forth in Tenn. Code Ann. § 65-4-107 as part of the Authority's determination of whether the franchise "properly conserves the public interest." The Hearing Officer finds that the proposed franchise fee of five percent (5%) is not so excessive as to render the franchise contrary to the public interest. Based upon a review of the entire record, the Hearing Officer finds that the franchise agreement between Iris and the City of Knoxville "is necessary and proper for the public convenience and properly conserves the public interest" and thus meets the requirements of Tenn. Code Ann. § 65-4-107.

### **IV. Small and Minority-Owned Telecommunications Business Participation Plan**

1. Iris has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

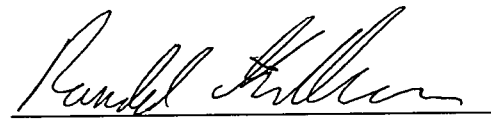
### **V. Compliance with Tennessee's County-Wide Calling Requirements**

1. Iris has indicated its awareness of, and its obligation to comply with, the requirements of county-wide calling as set forth in Tenn. Code Ann. § 65-21-114.

**IT IS THEREFORE ORDERED THAT:**

1. The *Application for Certificate of Public Convenience and Necessity to Provide Certain Telecommunications Services within the State of Tennessee and Approval of Franchise Agreement* of Independent Telecommunications Group, LLC d/b/a Iris Networks is approved; and

2. Any party aggrieved by the Hearing Officer's decision in this matter may file a petition for reconsideration within fifteen (15) days from and after the date of this Order.

  
Randal Gilliam, Hearing Officer